

TFC Contact No. 18-015-000
RFP No. 303-5-01276
Clifford Power Systems, Inc.
Amendment No. 3

**AMENDMENT NO. 3
TO THE
CONTRACT FOR
EMERGENCY GENERATORS AND AUTOMATIC TRANSFER SWITCHES
PREVENTATIVE MAINTENANCE, REPAIR AND RENTAL SERVICES
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
CLIFFORD POWER SYSTEMS, INC.**

THIS AMENDMENT NO. 3 is entered into by and between the Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 and Clifford Power Systems, Inc. (hereinafter referred to as "Contractor"), located at 4918 Burleson Road, Austin, Texas 78744, to amend the original Contract between the parties (hereinafter referred to as the "Contract"), as amended.

WHEREAS, on or about September 1, 2017, the Parties entered into that one certain *Contract for Emergency Generators and Automatic Transfer Switches Preventative Maintenance, Repair and Rental Services Between the Texas Facilities Commission and Clifford Power Systems, Inc.*; and

WHEREAS, on November 6, 2017, the Parties entered into Amendment No. 1 for the purpose of adding additional fees; and

WHEREAS, on July 23, 2018, the Parties entered into Amendment No. 2 for the purpose of making an administrative change regarding delivery releases and to add statutorily required provisions; and

WHEREAS, the Parties now desire to enter into Amendment No. 3 for the purpose of extending the contract term by two (2) months, to add additional funding, and to change the Contract contact name; and

WHEREAS, subject to Contract Article X, Section 10.21, Entire Contract and Modification, as the Section is re-numbered Section 10.23 below, such modifications may only be effected by a written amendment to the Contract;

WHEREAS, TFC has determined to modify the Contract to include additional provisions, terms and conditions that have been adopted subsequent to the execution of the Contract and/or any Amendment(s) thereto, in order to reflect the will of the Texas Legislature or to comply with action(s) or requirement(s) of the State Auditor's Office, the Office of the Attorney General, the Comptroller of Public Accounts, and/or other authorizing entities of the state;

NOW, THEREFORE, the parties agree to amend the Contract as follows:

1. The Parties agree to modify ARTICLE II – TERM, Section 2.01, Contract Award, subsection (a) so that Section 2.01 (a) reads in its entirety, as follows:

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“(a) This Contract shall be effective as of September 1, 2017, and shall expire on October 31, 2019, unless renewed by the parties or terminated earlier, as provided in Section 2.3 below.”

2. The Parties agree to modify ARTICLE II – TERM, by adding Section 2.07, which shall read in its entirety, as follows:

“2.07. **RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT.** In the event that the Contract is terminated for any reason, or upon its expiration, TFC shall retain ownership of all associated work products and documentation obtained from the Contractor under this Contract.

3. The parties agree to modify ARTICLE III – CONSIDERATION, Section 3.1, Contract Limit and Fees and Expenses to indicate funding for the additional two (2) months, September 1, 2019 through October 31, 2019, by deleting Section 3.1 in its entirety and replacing it with Section 3.1, as follows:

“3.01. **CONTRACT LIMIT AND FEES AND EXPENSES.** The total amount of this Contract shall not exceed Three Hundred Eighty-One Thousand Eight Hundred Twelve and No/100 Dollars (\$381,812.00). This amount includes the Fiscal Year 2018-2019 contract base fee of Two Hundred Sixty-One Thousand Eight Hundred Twelve and No/100 Dollars (\$261,812.00) and One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00) to cover any Additional Services, as defined in Section 3.3, below. Pricing fees will be invoiced in accordance with Exhibit A-1 – Facilities, Equipment List, Compensation and Fees. Any changes to the not-to-exceed amount of this Contract or pricing fees set forth in Exhibit A-1 – Facilities, Equipment List, Compensation and Fees, shall be submitted to TFC for review and shall be approved by amendment to this Contract.”

4. The Parties agree to modify ARTICLE VIII–INSURANCE, INDEMNIFICATION AND LEGAL OBLIGATIONS, Section 8.01, Insurance, paragraph 8.01(a) by deleting paragraph 8.01(a) in its entirety and replacing it with paragraph 8.01(a), as follows:

“8.01.(a) Workers’ Compensation and Employers’ Liability coverage with minimum policy limits for employers’ liability of \$1,000,000.00 bodily injury per accident, \$1,000,000.00 bodily injury disease policy limit and \$100,000.00 per disease, per employee. Workers’ compensation insurance coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(46). Pursuant to Texas Labor Code Section 406.096, certification in writing from Contractor and Contractor’s subcontractors shall be provided to TFC upon request and without expense.”

5. The Parties agree to modify ARTICLE IX – CONTRACTOR GENERAL AFFIRMATIONS, by deleting Section 9.15, Prohibition Against Boycotting Israel, and replacing it with Section 9.15, Entities that Boycott Israel, as follows:

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“9.15. **ENTITIES THAT BOYCOTT ISRAEL.** Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of this Contract. Contractor shall state any facts that make it exempts from the boycott certification.

6. The Parties agree to further modify ARTICLE IX – CONTRACTOR GENERAL AFFIRMATIONS, by adding Sections 9.17 through and including 9.20, which shall read in their entirety as follows:

“9.17. **PROHIBITION AGAINST CONTRACTING WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS.** In accordance with Section 2251.152 of the Texas Government Code, TFC is prohibited from entering into a governmental contract (as defined in Texas Government Code Section 2252.151(3)) with a company that is identified on a list prepared and maintained under Texas Government Code Section 806.051, 807.051, or 2252.153. If PSP is on the above-referenced list the Agreement will be considered void or voidable and TFC will not be responsible to pay PSP for any work performed.

9.18. **CERTIFICATION CONCERNING RESTRICTED EMPLOYMENT FOR FORMER STATE OFFICERS OR EMPLOYEES UNDER GOVERNMENT CODE § 572.069.** Contractor certifies that it has not employed and will not employ a former TFC or state officer who participated in a procurement or contract negotiation for TFC involving Contractor within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose service or employment ceased on or after September 1, 2015.

9.19. **EXCLUDED PARTIES.** Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

9.20. **SUSPENSION AND DEBARMENT.** Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.”

7. The Parties agree to modify ARTICLE X – MISCELLANEOUS PROVISIONS, by adding Paragraph 10.2(a), Requirement to Utilize HUB Compliance Reporting System, as follows:

“10.2(a) **Requirement to Utilize HUB Compliance Reporting System.** Pursuant to Texas Administrative Code, Title 34 §§ 20.85(f)(1)(2) and 20.287(b), TFC

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administers monthly HUB Subcontracting Plan ("HSP") to include the Progressive Assessment Report ("PAR") compliance monitoring through a HUB Compliance Reporting System known as B2G. Contractor and Contractor's Subcontractors must submit required PAR information into the B2G system as a condition of payment. Any delay in the timely submission of PAR information into the B2G system will be treated as a deficiency and the payment request will be subject to suspension until such deficiency has been resolved."

8. The parties hereby agree to modify ARTICLE X – MISCELLANEOUS PROVISIONS – Section 10.09, Notices, by replacing the Contractor notification information in its entirety and replacing it with the Contractor notification information that follows:

"For Contractor: Clifford Power Systems, Inc.
4918 Burleson Road
Austin, Texas 78744
Attention: Taylor Russo, Sales Representative
Telephone: (512) 477-6937
E-Mail: trusso@cliffordpower.com"

9. The Parties agree to further modify ARTICLE X – MISCELLANEOUS PROVISIONS, by re-numbering Section 10.21, **ENTIRE CONTRACT AND MODIFICATION** as Section 10.23, and by inserting Sections 10.21 and 10.22, so that the inserted Sections and the newly-numbered Section read in their entirety, as follows:

"10.21. **ABANDONMENT AND DEFAULT.** If Contractor defaults on this Contract, TFC reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible respondent. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work.

10.22. **ANTITRUST AND ASSIGNMENT OF CLAIMS.** Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (i) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (ii) communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract. Contractor assigns to the State of Texas all of Contractor's rights, title, and interest in and to all claims and causes of action Contractor may have under the antitrust laws of Texas or the United States for overcharges associated with the Contract.

10.23. **ENTIRE CONTRACT AND MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended

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as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistently with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension, or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.”

10. Except as expressly amended above, all provisions of the Contract remain in full force and effect.

In Witness Whereof, the parties hereto have made and executed this Amendment No. 3 to this Contract to be effective as of September 1, 2019.

TEXAS FACILITIES COMMISSION

By: DocuSigned by:
Mike Novak
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Mike Novak

Executive Director

Date of execution: 08/27/2019 | 4:31 PM CDT

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Dir 

CLIFFORD POWER SYSTEMS, INC.

By: DocuSigned by:
Taylor Russo
A619184F398D42A...

Taylor Russo

Sales Representative

Date of execution: 08/27/2019 | 4:20 PM CDT